GOVERNMENT OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD

TEAMSTERS LOCAL UNION NO. 639 and 730 a/w INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO,

PERB Case No. 02-U-10

Complainants,

DISTRICT OF COLUMBIA PUBLIC SCHOOLS,

v.

Respondent.

BRIEF FOR THE COMPLAINANTS

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INTRODUCTION

On or about February 6, 2002, Complainants Teamsters Local Union No. 639 and 730 affiliated with the International Brotherhood of Teamsters, AFL-CIO, filed an unfair labor complaint alleging that District of Columbia Public Schools ("DCPS") committed unfair labor practices in violation of D.C. Code §1-618.4(a)(5) and (1) in connection with the implementation of the Superintendent's Central Office Transformation Plan. Hearing Examiner Gloria Johnson conducted an evidentiary hearing on May 15, 2002. Post-hearing briefs were filed on June 27, 2002.

ISSUES PRESENTED

- 1. Whether the District of Columbia Public Schools violated the CMPA by failing to bargain with the Complainants concerning the impact and effect of a reorganization on bargaining unit employees.
- 2. Whether the District of Columbia Public Schools violated the CMPA by failing to provide information requested by the Complainants concerning the Superintendent's Central Office Transformation Plan.
 - 3. If so, what remedy is appropriate.

FACTS

A. Background

On June 24, 1986, Local 639¹ and Local 730² (collectively referred to herein as "Union") were jointly certified by the Public Employee Relations Board ("PERB") as the exclusive bargaining agent for District of Columbia Public School ("DCPS")³ employees in the following five bargaining units: Operating Engineers Unit, Custodian Unit, Transportation and Warehouse Service Unit, Cafeteria Managers Unit and Cafeteria Workers Unit. [PERB Certification Nos. 35-39;Complaint ¶4;]. Subsequently, Local 639 was certified as the exclusive bargaining agent for several other groups of DCPS employees.⁴

¹Complainant Drivers, Chauffeurs and Helpers Local Union No. 639 affiliated with the International Brotherhood of Teamsters, AFL-CIO ("Local 639") is a labor organization within the meaning of the CMPA. Local 639 maintains its principal office at 3100 Ames Place NE, Washington, DC 20018 (202-636-8170). John Catlett is the President and principal officer of Local 639. [Complaint ¶1;].

²Complainant Warehouse Employees Local Union No. 730 affiliated with the International Brotherhood of Teamsters, AFL-CIO ("Local 730") is a labor organization within the meaning of the CMPA. Local 730 maintains its principal office at 2001 Rhode Island Ave. NE, Washington, DC 20018 (202-529-3434). Archie Smith is the President and principal officer of Local 730. [Complaint ¶2;].

³Respondent District of Columbia Public Schools ("Public Schools") maintains its principal office at 825 North Capitol St., N.E., Washington, DC 20002. The Public Schools is an employer within the meaning of the CMPA and has the authority to negotiate and execute collective bargaining agreements with labor organizations concerning wages and other terms and conditions of employment. The Superintendent's telephone number is 202-442-5885. The Director of Labor Management and Employee Relations position is currently vacant. The Public Schools' General Counsel and Chief Negotiator is Veleter M.B. Mazyck. Her telephone number is 202-422-5373. [Complaint ¶3;].

⁴On March 9, 1988, PERB certified Local 639 as the exclusive bargaining agent for DCPS employees in a Maintenance Unit. PERB Certification No. 47. This unit was consolidated with the (continued...)

The Union and DCPS have been parties to a continuous collective bargaining relationship, embodied in various collective bargaining agreements, covering the Operating Engineers Unit, Custodian Unit, Transportation and Warehouse Service Unit, Cafeteria Managers Unit and Cafeteria Workers Unit. After its certification, the Union initially adopted a collective bargaining agreement negotiated between DCPS and a predecessor union. Subsequently, the Union and the DCPS entered into a collective bargaining agreement for the period 1987-1990, a collective bargaining "agreement" for the period 1990-1993, an "agreement" for the period 1993-1996; and an interest arbitration award amending the 1993-1996 "agreement" to provide wage increases for 1996-2000. True and correct copies of the 1993-1996 Agreement and the 1996-2000 Interest Arbitration Award are on file with PERB. [Complaint ¶8;].

B. Events Culminating in the Instant Complaint

On November 16, 2001, the Board of Education ("Board") conducted a special meeting. The Board unanimously approved "the Superintendent's central office transformation plan." The Executive Summary reveals that employees in the Operating Engineers Unit and the Custodian Unit will have their positions abolished, that the Board and an outside contractor will issue new position descriptions, that each affected employee will have to apply to retain his/her job, and that employees not "selected for new positions" will be terminated. [Complaint ¶9; Complaint Exhibit 1; Plaintiffs' Exhibit 1; Tr. 18].

⁴(...continued)

Custodian Unit. [PERB Certification No. 50; Complaint ¶5;]. On October 6, 1989, PERB certified Local 639 as the exclusive bargaining agent for DCPS employees in the Attendance Counselors Unit. [PERB Certification No. 52; Complaint ¶6;]. On March 28, 1990, PERB certified Local 639 as the exclusive bargaining agent for RW and SW employees in the Supply Management Branch, Equipment Maintenance Unit. [PERB Certification No. 60; Complaint ¶7;].

On January 18, 2002, Local 639 President John Catlett wrote Superintendent Paul L. Vance concerning rumors concerning the plan to reorganize. Mr. Catlett asserted that the "just cause" provision in the Collective Bargaining Agreement prohibited terminations without cause and that the unilateral change in bargaining unit work violated the Comprehensive Merit Personnel Act. [Complaint ¶10; Complaint Exhibit 2; Plaintiffs' Exhibit 1; Tr. 19].

Neither Superintendent Vance nor DCPS responded to Mr. Catlett's letter. [Complaint ¶11; Tr. 16].

Likewise it is undisputed that DCPS failed to respond to the Union's February 4, 2002 letter requesting information concerning the transformation and requesting bargaining over the decision and its impact on bargaining unit employees. [Complaint ¶12-13; Complaint Exhibit 3; Plaintiffs' Exhibit 1; Tr. 16, 19]. It is undisputed that DCPS did not offer to bargain about the impact of the Central Office Transformation, make proposals to the Union, request proposals from the Union, or respond to the Union's request to bargain about the impact of the Transformation. [Tr. 26-28].

On May 2, 2002, DCPS issued a Press Release announcing that "[a]pproximately 1,100 employees currently holding positions in central administration will receive Reduction-in-Force (RIF) notices" and that the RIF will become effective June 30, 2002. DCPS stated that

Positions in the new structure will be announced and advertised internally and externally May 3-24, 2002. The positions will be competitively filled after the vacancies are broadly advertised in traditional and non-traditional markets across the country.

[Plaintiffs' Exhibits 2 and 3; Tr. 10, 19-20].

On Friday, May 3, 2002, DCPS mailed RIF or termination Notices to between 100 and 400 Central Office employees in each of the bargaining units represented by the Teamsters. Each letter

states that the recipient's current job will be abolished and that his/her employment will terminate effective June 30, 2002. [Plaintiffs' Exhibits 4, 6; Tr. 16-17, 20-21, 23, 28-32].⁵ Simultaneously, and only after it had made and implemented its decisions, DCPS "briefed" the various unions and provided certain information about the Transformation it had implemented. [Tr. 12, 15].

On Sunday, May 5, 2002, DCPS published a three page classified advertisement listing hundreds of positions for which DCPS was seeking applicants. DCPS published an additional advertisement on May 12. [Plaintiffs' Exhibit 5; DCPS Exhibit C; Tr. 21-22].

Subsequently, after meetings with Teamster representatives, DCPS rescinded some of the termination letters issued to Teamster-represented employees. [Plaintiffs' Exhibit 7; Tr. 17, 24]. Thereafter, additional termination letters were rescinded. Even after implementing its Transformation, DCPS provided the Union with constantly shifting and changing numbers of bargaining unit persons issued termination letters.

ARGUMENT

I. DCPS VIOLATED THE CMPA BY REFUSING TO PROVIDE INFORMATION REASONABLE AND NECESSARY FOR BARGAINING AND BY REFUSING TO BARGAIN AT THE UNION'S REQUEST

For purposes of this proceeding only, we do not challenge DCPS's right to reorganize and we accept at face value for purposes of this proceeding only DCPS Deputy General Counsel James Baxley's statement that the Central Office Transformation was implemented pursuant to DCPS

⁵Initially, DCPS informed the Union that 410 employees would receive termination letters. [Tr. 29-30].

Regulations permitting Reductions-in-Force.⁶ Nor do we dispute here Mr. Baxley's contention that the Superintendent's Central Office Transformation was intended to improve DCPS's efficiency and to reduce the cost of operating the school system. The Transformation may save \$16.3 million by abolishing the current Central Office structure, including mid- and upper-level management, and replacing it with a new structure summarized in the advertisement for new positions. The Transformation will affect approximately 1,100 employees, most of whom are not represented by the Union. Much of the projected cost savings is attributable to the elimination of Central Office positions and, therefore, the termination of Central Office employees. [Tr. 10-14].

Rather, as we stated at the hearing, in this proceeding the Union alleges that DCPS refused to bargain about the impact of the Transformation on bargaining unit employees represented by the Teamsters. [Tr. 5, 8, 15].⁷

A. DCPS unlawfully refused to provide information

In a series of cases, PERB has uniformly held that the duty to bargain in good faith includes the obligation to provide information necessary for bargaining. In AFGE Local 872 v. D.C. Department of Public Works, PERB Case Nos. 94-U-02, 94-U-08, Opinion No. 439 (1995), PERB found a violation where the employer met with the union and provided and notice of RIF, but failed to provide the union with information concerning RIF necessary for the union to perform its duties as exclusive bargaining agent. See also Doctors' Council of D.C. General Hospital v. D.C. Health

⁶See DCPS Exhibits A, B and D.

⁷We reserve our right to challenge in other proceedings and in other fora whether DCPS did observe its Regulations in implementing the Central Office Transition, whether DCPS violated the constitutional or statutory rights of certain employees in the Transition, or whether DCPS otherwise violated any laws. [Tr. 40-41].

and Hospitals Public Benefit Corp., PERB Case No. 00-U-29, Opinion No. 641, 47 DCR 10108 (2000); Doctors Council of D.C. General Hospital v. D.C. General Hospital, PERB Case No. 95-U-10, 95-U-18, Opinion No. 482, 46 DCR 6268 (1996).

Here, the Union wrote, in pertinent part, as follows [Complaint Exhibit 2; Plaintiffs' Exhibit 1]:

Please consider this a formal request to negotiate over the planned changes in the definition of the bargaining unit. As you know, an employer violates the CMPA by unilaterally changing the definition of the bargaining unit. The re-titling of bargaining unit positions can occur only by agreement of the parties or by a PERB decision. Assuming, *arguendo*, that the Public Schools can lawfully impose the "transformation" unilaterally, the Union seeks to negotiate over its impact on bargaining unit employees. We will propose such topics as the continuation of pay and benefits, assistance in relocating to other positions in the District of Columbia Government and in the private sector, and other forms of outplacement counseling.

We hope to begin bargaining shortly after we receive the following documents, which we believe are necessary to properly understand and evaluate the Superintendent's plan:

- 1. A complete copy of the "transformation" document and all supporting materials which discuss the "transformation" with respect to bargaining unit positions.
- 2. A copy of all requests for proposals issued seeking contractors to assist the Board in the reclassification process or to perform other duties in connection with the "transformation."
- 3. A copy of all contracts issued in response to the RFP's identified above.
- 4. Copies of all new position descriptions and the position descriptions they replace.
- 5. Copies of all documents used, or to be used, in determining whether current bargaining unit employees are qualified for appointment to the "new" positions.

DCPS admittedly never responded to the Union's request.

DCPS never asserted to the Union or in its Answer to the Complaint that the Union's request was unreasonable or otherwise inappropriate. The Union's requests obviously seek information relevant to the planned Transformation, the types of jobs eliminated and created, and the likelihood that incumbent employees could retain their jobs. Thus, DCPS is precluded from contesting the reasonableness of the request in this proceeding. Any challenge presented in its post-hearing brief would preclude the Union from introducing evidence concerning the request.

In its February 28 Answer, DCPS erroneously asserted that it had not refused to bargain in good faith because it had not then taken any of the actions contemplated by the Transformation. [Answer ¶¶14, 16]. DCPS missed the point. The Board of Education approved the Transformation plan on November 16, 2001. The Union's request for information and bargaining followed by 2½ months. DCPS was obligated to respond and provide information.

B. DCPS unlawfully refused to bargain about the impact of the Transformation

D.C. Code §1-618.4(a)(5) does not prohibit an employer from unilaterally implementing a management right. The refusal to bargain violation arises from the employer's failure to provide an opportunity to bargain over the impact and effects once a request to bargain is made. For example, although management has a non-negotiable right to implement personnel transfers (D.C. Code §1-618.8(a)(2)), it must nevertheless bargain regarding procedures for implementing transfers and for meeting their impact and effect. *University of the District of Columbia Faculty Ass'n and University of the District of Columbia*, PERB Case No. 82-N-01, Opinion No. 43, 29 DCR 2975 (1982). An employer's meeting with the union to announce its decision is not bargaining over impact. *Fraternal*

Order of Police Metropolitan Police Department Labor Committee v. D.C. Metropolitan Police Department, PERB Case No. 99-U-44, Opinion No. 607 (1999).

Here, it is undisputed that on February 4 the Union requested bargaining about the impact and effect of a reorganization involving DCPS employees. It is undisputed that DCPS did not offer to bargain about the impact of the Central Office Transformation, did not make proposals to the Union, did not request proposals from the Union, and did not respond to the Union's request to bargain about the impact of the Transformation. It is undisputed that DCPS implemented a reorganization without affording the Union the opportunity to bargain about the impact of the reorganization. Therefore, DCPS violated §1-618.4(a)(5). AFGE Local 2725 v. D.C. Department of Public and Assisted Housing, PERB Case No. 92-U-21, Opinion No. 404, 43 DCR 7019 (1994) (employer had a duty to bargain with respect to the impact of its organizational realignment or reorganization).

It is irrelevant that the violation continued after the filing of the Complaint.

II. DCPS SHOULD BE ORDERED TO RESCIND THE TERMINATION OF ANY TEAMSTER-REPRESENTED EMPLOYEES UNTIL THE COMPLETION OF EFFECTS BARGAINING

Although an Agency need not bargain over management rights, after a timely request is made the agency must bargain <u>before</u> implementing its reserved decision. The Agency must bargain over issues such as training, severance pay, administrative leave and job placement whether or not the union made any specific proposals. *NAGE Local R3-06 v. D.C. Water and Sewer Authority*, PERB Case No. 99-U-04, Opinion No. 635, 47 DCR 7551 (2000).

Although restoration of the *status quo ante* is generally inappropriate to redress a refusal to bargain over impact and effects, PERB has acknowledged that such relief might be appropriate with evidence that impact bargaining would negate the management rights decision and that recission would not disrupt or impair agency's operation. *Fraternal Order of Police Metropolitan Police Department Labor Committee v. D.C. Metropolitan Police Department*, PERB Case No. 99-U-44, Opinion No. 607, 47 DCR 1449 (1999).

Unlike *Opinion No. 607*, restoration of the *status quo ante* is clearly appropriate. Although DCPS did not bargain with the Union, Deputy General Counsel Baxley met with Union representatives. Following that meeting, DCPS announced the recission of some of the terminations. DCPS's recission of many of its RIF or termination notices confirms the worth of impact bargaining.

Given the changing figures provided by the District, it is highly likely that even the most recent figures are not entirely accurate. Obviously, DCPS' unilateral and unclear actions have generated significant confusion, anxiety, and concern among the employees.

Had DCPS cooperated with the Union, the Union surely would have complained about the excessive scope of the RIF and DCPS's deviation from the Frequently Asked Questions pamphlet. Perhaps more terminations would have been suspended. Had DCPS discussed the Transformation with the Union, dozens of employees would have been spared the confusion of receiving improper and unnecessary termination letters. Had DCPS negotiated with the Union before implementing the Transformation, employees threatened with discharge would have known that their wages and health care would continue while they sought other employment. Had DCPS negotiated with the Union, DCPS' efforts to rewrite job descriptions could have been evaluated in light of the work actually performed by the employees.

We also urge PERB to require DCPS to bargain with the Union about the "transformation" and its impact on bargaining unit employees and to take such other actions as PERB feels are appropriate to remedy the violation.

CONCLUSION

For the reasons stated herein, we urge the Hearing Examiner to conclude that DCPS refused to bargain in good faith in violation of the CMPA and to order DCPS to rescind the termination of Teamster-represented employees until the completion of impact bargaining.

Respectfully submitted,

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June 27, 2002

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I certify that a copy of the foregoing post-hearing brief was sent, via United States Mail postage-prepaid, this 27th day of June 2002, to:

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GOVERNMENT OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD

TEAMSTERS LOCAL UNION NO. 639 a/w INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO,

and

PERB Case No. 02-U-10

TEAMSTERS LOCAL UNION NO. 730 a/w INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

Complainants,

v.

DISTRICT OF COLUMBIA PUBLIC SCHOOLS,

Respondent.

BRIEF FOR RESPONDENT, DISTRICT OF COLUMBIA PUBLIC SCHOOLS

AND NOW, comes the respondent, District of Columbia Public Schools ("DCPS"), by and through counsel, and submits the following Brief in support of its position in the above-captioned matter.

Background

Record Facts

On May 15, 2002, a hearing was conducted and the parties introduced documents and stipulated to many of the facts in this matter. The complainants, Teamster Locals 639 and 730 ("Teamsters"), initiated this action on February 6, 2002, alleging that DCPS committed an unfair labor practice by failing to bargain the removal from and

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reclassification of positions in the bargaining unit, in violation of D.C. Code §1-618.4(a)(1) and (a)(5).¹ (Complaint, para. 14.)

The complaint was instituted in response to DCPS' Central Office Transformation plan ("Plan"). The DCPS Board of Education approved the Plan on November 16, 2001. (Complainants' Exhibit "1"). The Plan provided for the abolishment of all existing central office positions², the issuance of reduction-in-force (RIF) letters to all employees, an application and interview process for internal and external applicants and the termination (with severance) of all employees not selected for new positions. Id. The Plan abolished approximately 1,100 positions. The Plan was designed to achieve two purposes: improve services to schools and increase austerity. (Complainants' Exhibit "4") On January 18, 2002 and February 4, 2002, the Teamsters corresponded with DCPS, seeking to bargain over the implementation of the Plan. Id. The Teamsters sought to bargain over issues such as pay and benefit continuation, relocation assistance and outplacement counseling. DCPS did not respond to this correspondence.

On May 2, 2002, DCPS announced that the Plan would be implemented. DCPS employees working in positions to be abolished received a RIF notice on May 3, 2002, stating that their service will be terminated on June 30, 2002. (Complainants' Exhibit "2"). The positions were advertised through May 31, 2002³ and were to be filled by June 24, 2002. Id. The Teamsters leadership were briefed and provided information regarding the RIF on May 3, 2002. Approximately 700 DCPS employees received RIF

¹ Section 1-618.4 was recodified in 2001 (without change) as Section 1-617.04. Subsection (a)(1) prohibits the District from interfering, restraining, or coercing any employee in the exercise of guaranteed rights. Subsection (a)(5) prohibits the District from refusing to bargain collectively in good faith with the exclusive representative.

² In general, DCPS central office positions are administrative support positions that do not provide direct, school-based services to students. Plaintiff's Exhibit "6" (the FAQ sheet) lists all exempt positions.

³ The application deadline was initially announced as May 24, 2002; however, it was extended until May 31, 2002.

notices.⁴ A substantial number of Teamsters members received a RIF letter and an FAQ information sheet on May 3, 2002. (Complainants' Exhibits "4", "6").

The abolished positions were listed as available in the May 5, 2002 and May 12, 2002 editions of the *Washington Post* (DCPS Exhibit "C"), as well as other local and national media outlets. A full listing of abolished positions, as well as vacancy announcements and application procedures, was also posted on the DCPS website (http://www.k12.dc.us).

⁴ The balance of the 1,100 abolished positions were vacant.

Issue Presented

There is a single issue before the Hearing Officer in this matter: Did DCPS commit an unfair labor practice when it did not engage in the bargaining process with the Teamsters over the terms and manner of implementation of the Central Office Transformation Plan?

Summary of Argument

The Plan constituted an abolishment of positions within the DCPS central administration. The right to abolish positions within an agency is a management prerogative specifically exempted from bargaining by Section 1-624.08(j) of the Comprehensive Merit Personnel Act, D.C. Code §1-624.08(j). The procedures used in implementing the Plan were in accordance with the CMPA, and did not violate any rights granted to the Teamsters. DCPS' unilateral implementation of the Plan did not, as a matter of law, constitute an unfair labor practice.

Argument

I. THE DCPS CENTRAL OFFICE TRANSFORMATION PLAN CONSTITUTED AN ABOLISHMENT OF POSITIONS WITHIN THE AGENCY, CONSISTENT WITH THE RELEVANT PROVISIONS OF THE COMPREHENSIVE MERIT PERSONNEL ACT.

The Plan constituted a significant restructuring of the DCPS central administrative offices. As stated above, approximately 1,100 positions (of which 720 were encumbered) were eliminated pursuant to the Plan. This action was taken pursuant to Section 1-624.08(a) of the CMPA, which authorizes each agency head "to identify positions for abolishment." The threshold question in this matter is whether or not the actions taken by DCPS constituted such an abolishment.

"Abolishment" is not a defined term in CMPA, and is not defined elsewhere in the District of Columbia Code. The term has also not been defined by our courts. In the absence of a legislative or judicial definition, it is appropriate to rely upon its common definition.

The dictionary definition of "abolish" is "to do away with; annul".⁵ The issue, therefore, is whether the actions taken by DCPS "did away with" the positions. If so, the Plan was an abolishment. DCPS submits that all of the record evidence presented in this case demonstrates conclusively that the positions identified by the Plan and encumbered by the Teamsters were "done away with", and hence abolished. The public statements, newspaper articles and other information disseminated by DCPS all indicate that the current positions are being eliminated.

It is anticipated that the Teamsters will argue that the Plan did not constitute an abolishment, in that no positions were abolished; rather, the Plan was simply a pretext to

 $^{^5}$ American Heritage® Dictionary of the English Language (Fourth Edition, Copyright © 2000 by Houghton Mifflin Company)

terminate their members without cause, in violation of the collective bargaining agreement. This argument is a simple conclusory declaration, made without the benefit of any factual support. The most apparent logical flaw in this argument is that (as evidenced by the Washington Post advertisements) the Teamsters members only occupied a small fraction (78 of 720) of the affected positions. Moreover, no record evidence was presented by the Teamsters to support this argument. To the contrary, all documents and statements made before the hearing officer indicate that the Plan abolished positions within the DCPS central administration.

II. THE ABOLISHMENT OF POSITIONS IS SPECIFICALLY EXEMPTED FROM BARGAINING BY THE COMPREHENSIVE MERIT PERSONNEL ACT.

Section 1-624.08 of Subchapter 29 of the CMPA ("Abolishment of positions for fiscal year 2000 and subsequent years") sets forth the procedures to be followed in abolishing positions within an agency. Because, as set forth above, the Plan constituted an abolishment of positions, Section 1-624.08 is the dispositive provision in this matter. The section sets forth several relevant rules regarding abolishments, notably:

- Any District government employee who encumbers a position identified for abolishment shall be separated, regardless of date of hire (1-624.08(c));
- Any District government employee shall be separated without competition
 or assignment rights, except that employees entitled to compete for
 retention are entitled to one round of lateral competition at the employee's
 competitive level (1-624.08(c), (d));
- Each employee selected for separation shall receive 30 days' written notice (1-624.08(e)); and

• Notwithstanding other provisions of the CMPA, the implementation of an abolishment of positions shall not be deemed negotiable (1-624.08(j)).

These provisions, read together, clearly indicate that the implementation of the Plan is not a matter for collective bargaining. It is a purely management matter. Section 1-624.08(j) is explicit in this regard. The agency head has the discretion to determine whether and what types of positions are to be abolished. The reason for the statutory, language is clear – if agency heads are to be fiscally responsible and accountable for their agency's mission, they require the discretion to operate their agencies in an efficient manner.

Conclusion

As was stated to the Hearing Officer, the Teamsters are solely concerned with the process utilized by DCPS in implementing the Plan. The sole issue is whether the implementation of the Plan was subject to bargaining.

The area of labor-management relations requires the constant balancing of employee and employer interests. In the majority of cases, equilibrium is achieved between these competing interests by requiring discussion, negotiation and/or bargaining. However, in this case, the legislature has spoken, and spoken clearly – when an agency such as DCPS identifies and abolishes positions, no bargaining is required. Accordingly, DCPS' unilateral implementation of the Plan was proper.

Respectfully submitted,

James A. Baxley

Deputy General Counsel

District of Columbia Public Schools

CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing Brief were mailed, first class, postage prepaid, this 27th day of June 2002, to:

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GOVERNMENT OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD

TEAMSTERS LOCAL UNION NO. 639, et al.,

v.

PERB Case No. 02-U-10

Complainants,

DISTRICT OF COLUMBIA PUBLIC SCHOOLS,

Respondent.

COMPLAINANTS' MOTION IN LIMINE TO EXCLUDE WITNESSES AND EXHIBITS

Complainants Teamsters Locals 639 and 730, by their undersigned counsel, hereby move the Hearing Examiner to preclude Respondent District of Columbia Public Schools from presenting witnesses or evidence at the hearing in the above-captioned case scheduled for May 15, 2002. In support of their Motion, Complainants state as follows:

- 1. On March 22, 2002, PERB issued a Notice of Unfair Labor Practice Hearing scheduling this case for May 15, 2002 at 10:00 a.m.
- 2. PERB Rule 550.11 unequivocally requires parties to submit a witness list at least five days before the start of a hearing.
- 3. PERB Rule 550.7 unequivocally requires each party to make every effort to furnish copies of proposed exhibits five days before a hearing.
- 4. As of May 13, Respondent District of Columbia Public Schools has submitted neither a witness list nor a list of exhibits.
- 5. The Hearing Examiner has authority to impose procedural sanctions upon parties to serve the interests of justice. The District of Columbia Public Schools should be precluded from

introducing witnesses or exhibits. Its failure to submit witness and exhibit lists has hindered Complainants' ability to prepare cross-examination. *See Chisholm v. AFSCME District Council* 20, PERB Case Nos. 99-U-32 and 99-U-33, Opinion No. 656 (2001).

CONCLUSION

For the reasons stated herein, PERB should preclude Respondent from presenting evidence or witnesses.

Respectfully submitted,

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Dated: May 13, 2002

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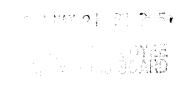


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May 17, 2002

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Re:

Teamsters Local Nos. 639 and 730 a/w IBT, AFL-CIO v. DCPS

PERB Case No. 02-U-10

Dear Mr. Castillo:

At the Hearing in this matter conducted on May 15, 2002, Ms. Johnson directed me to submit DCPS exhibits by May 20, 2002. Accordingly, I am enclosing eight copies of each of the following exhibits:

A - Chapter 15 of Title 5, DCMR;

B - Pages 3716 and 3717 of the April 19, 2002 DC Register, publishing emergency rulemaking related to Chapter 15;

C - Enlarged copies of the DCPS advertisements in the May 5 and May 12, 2002 Washington Post; and

D - Section 1-617.08 (Management Rights) of the DC Code.

Counsel for the complainant has not objected to the admission of these documents.

Respectfully submitted,

ames A. Baxley

Deputy General Counsel

Enclosures

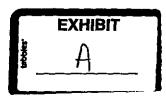
Cc: Jonathan Axelrod, Esq. (w/encl)

CHAPTER 15 REDUCTION-IN-FORCE

Secs.	•
1500	General Policy
1501	Competitive Areas
1502	Competitive Levels
1503	Reduction-in-Force Procedures for Fiscal Years 1996 and 1997
1504	Superintendent's Reassignment Option
1505	Notice Requirements
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4507	Frederick Control of the Control of

1500 GENERAL POLICY

- 1500.1 The purpose of this chapter is to establish an orderly procedure for the termination of the employment of employees of the Board of Education due to the lack of funds, lack of work, or reorganization of functions.
- Reduction-in-force (RIF) is a process whereby the total number of positions is reduced for one (1) or more of the following reasons:
 - (a) Budgetary reasons;
 - (b) Curtailment of work;
 - (c) Reorganization of functions; or
 - (d) Other compelling reasons.
- All employees of the D.C. Board of Education, regardless of previous classification, are classified as educational service employees under the personnel authority of the Board of Education and shall be processed pursuant to this chapter.
- When used in this chapter, the following terms shall have the meanings set forth in this subsection:
 - (a) Nonschool-based personnel: employees of the Board of Education who are not based at a local school or who do not provide direct services to individual students;
 - (b) School-based personnel: employees of the Board of Education who are based at a local school or who provide direct services to individual students;



- (c) School administrators: principals, assistant principals, school program directors, coordinators, instructional supervisors, and support personnel of the Board of Education;
- (d) Days: calendar days;
- (e) Encumbered position: a position which is presently filled by an employee performing an assigned function(s);
- (f) Length of service: includes service with the Board of Education, the federal government, the District of Columbia government, and the military. In addition, each employee who is a bona fide resident of the District of Columbia shall have added five (5) years to his or her creditable service for reduction-in-force purposes. For purposes of this section only, a nonresident District employee who was hired by the District government prior to January 1,1980, and has not had a break in service since that date, or, a former employee of the U. S. Department of Health and Human Services at Saint Elizabeth's Hospital who accepted employment with the District government on October 1, 1987, and has not had a break in service since that date, shall be considered a District resident; and
- (g) Status: designation within a position, or within the system, such as permanent, probationary, temporary, or temporary indefinite.
- 1500.5 The procedures set forth in this chapter shall supersede the terms of any negotiated collective bargaining agreement in force and effect or to be negotiated for the fiscal years ending September 30, 1996 and 1997.

AUTHORITY: §2 of an Act approved June 20, 1906, 34 Stat. 317, ch. 3446, D.C. Code §31-102 (1993 Repl. Vol.).

SOURCE: Final Rulemaking published at 43 DCR 5264 (September 27, 1996).

1501 COMPETITIVE AREAS

- The Superintendent is authorized to establish competitive areas based upon all or a clearly identifiable segment of the mission, a division, or a major subdivision of the Board of Education, including discrete organizational levels such as an individual school or office. Employees in one competitive area shall not compete with employees in another competitive area.
- 1501.2 School-based personnel shall constitute a separate competitive area from nonschool-based personnel who shall not compete with school-based personnel for retention purposes.

SOURCE: Final Rulemaking published at 43 DCR 5264, 5265 (September 27, 1996).

Title 5

1502 COMPETITIVE LEVELS

- For purposes of this section, "competitive levels" are groups, within a competitive area, consisting of all positions in the same grade or occupational level that are sufficiently alike in the following characteristics that a person could be assigned to any position without changing the terms of appointment or unduly interrupting the work program:
 - (a) Qualifications;
 - (b) Requirements;
 - (c) Duties:
 - (d) Responsibilities;
 - (e) Pay schedules; and
 - (f) Working conditions.
- Nonschool-based personnel or school administrators shall not be assigned or reassigned to the same competitive level as classroom teachers.

SOURCE: Final Rulemaking published at 43 DCR 5264, 5266 (September 27, 1996).

- 1503 REDUCTION-IN-FORCE PROCEDURES FOR FISCAL YEARS 1996 AND 1997
- An employee who encumbers a position which is abolished shall be separated in accordance with this chapter notwithstanding date of hire or prior status in any other position.
- 1503.2 If a decision must be made between employees in the same competitive area and competitive level, the following factors, in support of the purposes, programs, and needs of the organizational unit comprising the competitive area, with respect to each employee, shall be considered in determining which position shall be abolished:
 - (a) Significant relevant contributions, accomplishments, or performance;
 - (b) Relevant supplemental professional experiences as demonstrated on the job;
 - (c) Office or school needs, including: curriculum specialized education, degrees, licenses or areas of expertise; and
 - (d) Length of service.
- 1503.3 Employees separated pursuant to this section shall be entitled to severance pay in an amount to be determined by the Superintendent. The following shall be included in computing creditable service for severance pay:

Title 5

District of Columbia Municipal Regulations

- (a) Four (4) years for an employee who qualifies for veteran's preference; and
- (b) Three (3) years for an employee who qualifies for residency preference under this chapter.

SOURCE: Final Rulemaking published at 43 DCR 5264, 5266 (September 27, 1996).

1504 SUPERINTENDENT'S REASSIGNMENT OPTION

- As an option to separation, the Superintendent may reassign an employee who is subject to separation, subject to the provisions in this chapter.
- Employees separated under a reduction-in-force may be offered vacant positions, subject to the provisions in this chapter.
- The filling of a vacant position is discretionary and the Superintendent need not fill any vacancy that he or she may elect to keep vacant.

SOURCE: Final Rulemaking published at 43 DCR 5264, 5267 (September 27, 1996).

1505 NOTICE REQUIREMENTS

- An employee selected for separation shall be given specific written notice at least thirty (30) days prior to the effective date of the separation. The specific notice shall state specifically what action is to be taken, the effective date of the action, and other necessary information regarding the employee's status and appeal rights.
- An employee may also be given a written general notice prior to a separation due to a reduction-in-force but such general notice is not required. The general notice may be used when it is not yet determined what individual action, if any, will be taken.

SOURCE: Final Rulemaking published at 43 DCR 5264, 5267 (September 27, 1996).

1506 APPEAL OF RIF ACTIONS

- 1506.1 RIF actions shall be appealed pursuant to the provisions of this section.
- Neither the establishment of a competitive area smaller than this agency, nor the determination that a specific position is to be abolished, nor separation pursuant to this chapter shall be subject to review except as follows:
 - (a) An employee may file a complaint contesting a determination or a separation pursuant to Title XV of the Comprehensive Merit Personnel Act (D.C. Code §1-616.1) of §303 of the Human Rights Act of 1977 (D.C. Code §1-2543). Complaints filed pursuant to Title XV shall be filed in the D.C. Superior Court and those filed pursuant to the Human Rights Act with the D.C. Office of Human Rights; and

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District of Columbia Municipal Regulations

- (b) An employee may file with the Office of Employee Appeals an appeal contesting that the separation procedures of §§1503 and 1505 were not properly applied.
- 1506.3 An appeal or complaint shall be in writing and shall include the following:
 - _(a) The identity of the employee and the agency;
 - (b) The nature and the effective date of the action appealed; and
 - (c) A statement of the reasons the employee believes the action appealed is improper.

SOURCE: Final Rulemaking published at 43 DCR 5264, 5267 (September 27, 1996).

1507 FURLOUGHS

- An employee may be furloughed if at the time of the furlough the Superintendent intends to recall the employee to duty, to the position from which furloughed, within one (1) year.
- 1507.2 Furloughs shall be limited to one (1) year or less.
- A decision to furlough may be due to either curtailment of work, reorganization of functions, budgetary, or other compelling reasons.
- 1507.4 The determination regarding furlough shall be made by the Superintendent.
- 1507.5 If all employees who are furloughed from the same competitive level and competitive area are not to be recalled at the same time, the Superintendent shall establish the method by which employees are returned.
- 1507.6 If furloughed employees remain surplus at the expiration of the furlough period, a notice of separation by reduction-in-force shall be issued without the necessity for the employee's return to duty.
- Where it is known sufficiently in advance that a furloughed employee's services will not be required, furloughed employees may be given the required notice of separation by reduction-in-force while still in a furlough status.
- The provisions of §§1505 and 1506 shall be applicable to furloughed employees.
- 1507.9 To avoid a break in service, employees shall be carried in a leave-without-pay status during the time of a furlough.
- 1507.10 Life insurance and health insurance benefits shall continue uninterrupted during the period of furlough.
- 1507.11 Although annual and sick leave shall continue to be accrued during periods of furlough, no employee shall use accrued sick leave or annual leave during a period of furlough.

District of Columbia Municipal Regulations

Title 5

- 1507.12 If any gross salary is earned during a pay period in which a furlough is effected, deductions for taxes, retirement, tax-shelter annuities, and health and life insurance benefits shall be made.
- The period of a furlough shall be credited as part of an employee's service computation date for the purpose of calculating the employee's eligibility for retirement and for purposes of subsequent reductions-in-force (if applicable).

SOURCE: Final Rulemaking published at 43 DCR 5264, 5268 (September 27, 1996). -

EXHIBIT

DISTRICT OF COLUMBIA BOARD OF EDUCATION

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Board of Education, pursuant to the authority set forth in D.C. Code §2-501, et seq., D.C. Law 1-19, as amended by subsequent legislative action, hereby gives notice of emergency and proposed rulemaking action taken by the Board at its meeting held on March 20, 2002, to amend Chapter 15 of the Board Rules regarding Reduction-in-Force, by modifying various sections, adding a new Section 1505, and renumbering subsequent Sections. These amendments are necessary to create a more effective process for reductions-in-force.

The emergency is necessitated by the need to (1) quickly move forward with the central office transformation for budgetary reasons, and (2) reorganize functions to provide a more efficient and effective central administration. The emergency rulemaking took effect on March 20, 2002, following approval by the Board of Education. It shall expire within 120 days of its effective date or upon publication of a Notice of Final Rulemaking in the D.C. Register, whichever occurs first. The Board also gives notice of its intent to recommend final rulemaking action to adopt this emergency and proposed rulemaking in not less than thirty (30) days from publication of this notice in the D.C. Register.

Amend Section 1500.5 as follows:

1500.5 The procedures set forth in this chapter shall supersede the terms of any negotiated collective bargaining agreement in force and effect or to be negotiated for the fiscal year ending September 30, 2002, and subsequent fiscal years.

Amend Section 1503.3 as follows:

- 1503 REDUCTION-IN-FORCE PROCEDURES FOR FISCAL YEAR 2002 AND SUBSEQUENT FISCAL YEARS
- 1503.3 Where an entire competitive level within a competitive area is eliminated, these factors need not be considered in determining which positions will be abolished.

Renumber Current Section 1503.3 as 1503.4

Add New Section 1505 as follows:

- JOB SHARING, REDUCED HOURS AND REEMPLOYMENT PRIORITY CONSIDERATION
- 1505.1 The Superintendent is authorized to consider job sharing and reduced hours as alternatives to separating employees pursuant to this chapter.

- 1505.2 The Superintendent is authorized to establish and implement procedures that govern priority consideration for reemployment of separated employees.
- Nothing in this section shall either grant separated employees a right to be reemployed or grant current employees a right to job sharing or reduced hours.

Renumber Current Sections 1505-1507 as 1506-1508

Amend New Section 1507.2 as follows:

- 1507.2 Neither the establishment of a competitive area smaller than this agency, nor the determination that a specific position is to be abolished, nor separation pursuant to this chapter shall be subject to review except as follows:
 - (a) An employee may file a complaint contesting a determination or a separation pursuant to Subchapter XV of the Comprehensive Merit Personnel Act (D.C. Code §1-615.01, et seq.) or §303 of the Human Rights Act of 1977 (D.C. Code §2-1403.03). Complaints filed pursuant to Subchapter XV shall be filed in the D.C. Superior Court, and those filed pursuant to the Human Rights Act with the D.C. Office of Human Rights; and
 - (b) An employee may file with the Office of Employee Appeals an appeal contesting that the separation procedures of §§1503 and 1506 were not properly applied.

Written comments on the emergency and proposed rulemaking are invited from interested citizens. Such comments should be addressed to Ms. Paula Perelman, Executive Director, D.C. Board of Education, 825 North Capitol Street, N.E., Suite 9108, Washington, D.C. 20002. Copies of this rulemaking are available from the Office of the Board of Education by calling (202) 442-4289.

children first

The Transformation of DC Public Schools



Paul L. Vance, Superintendent

he District of Columbia Public Schools (DCPS) is in the midst of one of the most exciting and aggressive urban school reform efforts in the nation. Share in the excitement of transforming DCPS and seize the opportunity to become an integral part of this cutting-edge reform effort. Join DCPS's educational leadership team. The challenge will allow you to touch the future of public education in America, and shape the direction of urban education in one of the most distinguished and influential cities in the world. If you are a frontrunner in educational reform with talent, experience, knowledge and a proven record of achievement, then DCPS is the place for you. Be among other frontrunners contributing to the educational success of children in the nation's capital, as these professionals transform the school district into a national model of academic excellence.

When you join the DCPS team, you will become a member of a school system committed to developing inspired learners who excel academically and socially in dynamic schools that instill confidence and generate enthusiasm throughout the District of Columbia's many diverse communities. You will work under the leadership of an experienced and nationally acclaimed school superintendent with a heralded record of successful educational reform. You will work with a team of educational leaders and administrators who are directing significant change in the academic achievement of children. You will share your experiences and expertise in leveling the academic playing field for children in the District of Columbia. Furthermore, you will have the unique opportunity to establish partnerships and collaborate with some of the most influential educational, political, business and government leaders in the world.

Located in the heart of the nation's capital, DCPS features a multicultural population of students, teachers, principals, families and communities in a cosmopolitan blend of grand monuments, museums, historical landmarks and federal government complexes -- a virtual classroom experience for anyone who is chosen to become a part of DCPS.

DCPS is interested in complementing its existing leadership team with professionals who have established leadership skills, vision, creativity and a sincere desire to transform the lives of children. DCPS is interested in those with a commitment to quality, an appreciation for cultural diversity and the ability to help lead the District of Columbia Public Schools into a position of unparalleled educational prominence.

Search the listings below to find the position that best suits your qualifications and experience. To apply, individuals must submit a DC Government Application (DC2000) or a current resume and cover letter citing the position work title, vacancy number and complete ranking factors to the District of Columbia Public Schools, Office of Human Resources, 6th floor, 825 North Capitol Street, NE, Washington, DC 20002. ATTN: Recruitment Services. For more information, visit the DCPS website at www.k12.dc.us. The application deadline is May 31, 2002.



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GOVERNMENT OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD

TEAMSTERS LOCAL UNION NO. 639 a/w INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO,

and

C

PERB Case No. 02-U-10

TEAMSTERS LOCAL UNION NO. 730 a/w INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

Complainants,

v.

DISTRICT OF COLUMBIA PUBLIC SCHOOLS,

Respondent.

ANSWER TO UNFAIR LABOR PRACTICE COMPLAINT

Respondent District of Columbia Public Schools ("DCPS") hereby files the within Answer to the above-captioned Unfair Labor Practice Complaint, and in support thereof states the following:

- 1, 2. Admitted.
- 3. Admitted, except that Veleter M.B. Mazyck's telephone number is 202-442-5000, rather than the phone number stated in the Complaint.
- 4-8. Admitted.
- 9. The allegations of Paragraph Nine are based solely upon a document (attached to the Complaint as Exhibit "1") and thus need not be either admitted or denied. The document speaks for itself.

- 10. The allegations of Paragraph Ten are based solely upon a document (attached to the Complaint as Exhibit "2") and thus need not be either admitted or denied. The document speaks for itself.
- 11. Admitted.
- 12. The allegations of Paragraph Twelve are based solely upon a document (attached to the Complaint as Exhibit "3") and thus need not be either admitted or denied. The document speaks for itself.
- 13. Admitted. By way of further response, it is noted that the Complaint was filed on February 6, 2001, only two days after the mailing of the demand for bargaining set forth in the referenced February 4, 2002 letter.
- 14. The allegations of Paragraph Fourteen constitute a legal conclusion, which need not be admitted or denied. To the extent that a response is required, the allegations are strictly denied. To the contrary, DCPS has not taken any action to remove positions from the bargaining unit or reclassify bargaining unit positions. Because DCPS has not taken any of the alleged actions, it has not refused to bargain in good faith.
- 15. No response is required to Paragraph Fifteen, as it states the requested remedy.
- 16. By way of further response, DCPS states the following:
 - a. The proposed "central office transformation plan" approved by the Board of Education on November 16, 2001 has not yet been implemented by DCPS.

- b. The determination of what, if any, bargaining unit positions may be affected by the central office transformation plan has not been made.
- There has been no action taken by DCPS that affects either of the
 Complainants or any of their members.
- d. Because there has been no action by DCPS that affects the Complainants, the Complaint, on its face, fails to allege an unfair labor practice and should be dismissed.
- e. In the alternative, the Complaint fails to allege any dispute that this
 Board can resolve and the Complaint should be dismissed. The
 Complaint is clearly premature.

WHEREFORE, in light of the above, the District of Columbia Public Schools respectfully requests that the Complaint be dismissed.

Respectfully submitted

James A. Baxley

Deputy General Counsel

District of Columbia Public Schools

GOVERNMENT OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD

TEAMSTERS LOCAL UNION NO. 639 a/w INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO,

and

v.

PERB Case No. 02-U-/

TEAMSTERS LOCAL UNION NO. 730 a/w INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO,

Complainants,

DISTRICT OF COLUMBIA PUBLIC SCHOOLS,

Respondent.

UNFAIR LABOR PRACTICE COMPLAINT

Complainants Teamsters Locals 639 and 730, by their undersigned counsel, hereby file the following unfair labor practice complaint against the District of Columbia Public Schools. Complainants allege and state as follows:

PARTIES

1. Complainant Drivers, Chauffeurs and Helpers Local Union No. 639 affiliated with the International Brotherhood of Teamsters, AFL-CIO ("Local 639") is a labor organization within the meaning of the CMPA. Local 639 maintains its principal office at 3100 Ames Place NE, Washington, DC 20018 (202-636-8170). John Catlett is the President and principal officer of Local 639.

- 2. Complainant Warehouse Employees Local Union No. 730 affiliated with the International Brotherhood of Teamsters, AFL-CIO ("Local 730") is a labor organization within the meaning of the CMPA. Local 730 maintains its principal office at 2001 Rhode Island Ave. NE, Washington, DC 20018 (202-529-3434). Archie Smith is the President and principal officer of Local 730.
- 3. Respondent District of Columbia Public Schools ("Public Schools") maintains its principal office at 825 North Capitol St., N.E., Washington, DC 20002. The Public Schools is an employer within the meaning of the CMPA and has the authority to negotiate and execute collective bargaining agreements with labor organizations concerning wages and other terms and conditions of employment. The Superintendent's telephone number is 202-442-5885. The Director of Labor Management and Employee Relations position is currently vacant. The Public Schools' General Counsel and Chief Negotiator is Veleter M.B. Mazyck. Her telephone number is 202-422-5373.
- 4. On June 24, 1986, Local 639 and Local 730 (collectively referred to herein as "the Union") were jointly certified by the Public Employee Relations Board ("PERB") as the exclusive bargaining agent for Public School employees in the following five bargaining units: Operating Engineers Unit, Custodian Unit, Transportation and Warehouse Service Unit, Cafeteria Managers Unit and Cafeteria Workers Unit. PERB Certification Nos. 35-39.
- 5. On March 9, 1988, PERB certified Local 639 as the exclusive bargaining agent for Public School employees in a Maintenance Unit. PERB Certification No. 47. This unit was consolidated with the Custodian Unit. PERB Certification No. 50.
- 6. On October 6, 1989, PERB certified Local 639 as the exclusive bargaining agent for Public School employees in the Attendance Counselors Unit. PERB Certification No. 52.

- 7. On March 28, 1990, PERB certified Local 639 as the exclusive bargaining agent for RW and SW employees in the Supply Management Branch, Equipment Maintenance Unit of the Public Schools. PERB Certification No. 60.
- 8. The Union and the Public Schools have been parties to a continuous collective bargaining relationship, embodied in various collective bargaining agreements, covering the Operating Engineers Unit, Custodian Unit, Transportation and Warehouse Service Unit, Cafeteria Managers Unit and Cafeteria Workers Unit. After its certification, the Union initially adopted a collective bargaining agreement negotiated between the Public Schools and a predecessor union. Subsequently, the Union and the Public Schools entered into a collective bargaining agreement for the period 1987-1990, a collective bargaining "agreement" for the period 1990-1993, an "agreement" for the period 1993-1996, which remains in effect pending its renegotiation, and an interest arbitration award amending the 1993-1996 "agreement" to provide wage increases for 1996-2000. True and correct copies of the 1993-1996 Agreement and the 1996-2000 Interest Arbitration Award are on file with PERB.

EVENTS CULMINATING IN THE INSTANT COMPLAINT

9. On November 16, 2001, the Board of Education Conducted a Special Meeting. The Board unanimously approved "the Superintendent's central office transformation plan." The Executive Summary reveals that employees in the Operating Engineers Unit and the Custodian Unit will have their positions abolished, that the Board and an outside contractor will issue new position descriptions, that each affected employee will have to apply to retain his/her job, and that employees

not "selected for new positions" will be terminated. A true and correct copy of the Action Sheet and Executive Summary is attached hereto as Complaint Exhibit 1.

- 10. On January 18, 2002, Local 639 President John Catlett wrote Superintendent Paul L. Vance concerning rumors concerning the plan to reorganize. Mr. Catlett asserted that the "just cause" provision in the Collective Bargaining Agreement prohibited terminations without cause and that the unilateral change in bargaining unit work violated the Comprehensive Merit Personnel Act. A true and correct copy of Local 639's January 18, 2002 letter is attached hereto as Complaint Exhibit 2.
- 11. Neither Superintendent Vance nor the Public Schools responded to Mr. Catlett's letter.
- 12. On February 4, 2002, Local 639 requested the Public Schools to provide information concerning the transformation and to bargain over the decision and its impact on bargaining unit employees. A true and correct copy of Local 639's February 4, 2002 letter is attached hereto as Complaint Exhibit 3.
 - 13. The Schools have not yet responded to the Union's February 4, 2002 letter.
- 14. By removing positions from the bargaining unit without bargaining with the Union, and by reclassifying bargaining unit positions without negotiating with the Union, the Public Schools has refused to bargain in good faith in violation of the CMPA, D.C. Code §1-618.4(a)(1) and (5).
 - 15. To remedy these violations, PERB must order the Public Schools to:
 - a) cease and desist from unilaterally altering the agreed-upon bargaining units.

- b) cease and desist from reclassifying bargaining unit positions and requiring incumbent employees to apply for positions and face termination if they are not selected.
- c) make whole any employee discharged pursuant to the "transformation."
- d) bargain with the Union about the "transformation" and its impact on bargaining unit employees.
- e) take such other actions as PERB feels are appropriate to remedy the violation.

Respectfully submitted,

Jonathan G. Axelrod

Beins, Axelrod & Kraft, P.C.

1717 Massachusetts Avenue, N.W. Suite 704

Washington, D.C. 20036-2001

202-328-7222

202-328-7030 (telecopier)

Counsel for the Complainants

Dated: February 6, 2002

PAGE 09/10

AFFIRMATION

I swear that the foregoing Unfair Labor Practice Complaint is true and correct to the best of my knowledge and belief.

President, Teamsters Local 639

02/01/2002 20:01 FAX 202 44



DISTRICT OF COLUMBIA BOARD OF EDUCATION

825 NORTH CAPITOL STREET, N.E. WASHINGTON, DC. 20002 FAX (202) 442-5198 **TELEPHONE (202) 442-4289**

ACTION SHEET

Special Meeting

of the

District of Columbia Board of Education

825 North Capitol Street, N.E. Fifth Floor Board Room

Friday, November 16, 2001 2:30 P.M.

By voice vote, the Board of Education:

- approved unanimously a motion that the Board of Education waive Board Rule 105.2 to enable the Board to hold its November stated meeting on Thursday, November 29, 2001, at 5:30 p.m.:
- approved unanimously a motion that the Board of Education approve an FY 2002 D.C. Public Schools (DCPS) capital budget adjusted downward from its original level of \$220 million to its current level of \$174 million:
- approved unanimously a motion that the Board of Education approve an FY 2003 DCPS capital budget request in the amount of \$327.5 million; and

approved unanimously a motion that the Board of Education approve the Superintendent's central office transformation plan.

EXECUTIVE SUMMARY

CONFIDENTIAL DRAFT 11-14-01

- To improve central support to schools, DCPS will reorganize its central office around four primary goals:
- Increased responsiveness to schools and community
- Heightened focus on academics
- Performance oriented and accountable central staff
- Save money by improving central staff efficiency, allowing more funds for direct support of student achievement
- 2. DCPS will make several changes in the central administration's organization structure
- Reorganize reporting relationships to maximize support to schools
- proceeding throughout the entire central office organization Restructure and streamline central functions, starting with top and middle management and
- Launch a basic performance management system to hold program managers accountable for budget management and strategic goals
- 3. Making these changes will help DCPS achieve the four goals mentioned above, while saving approximately \$17.3 million annually (\$14.0m for 9 months) DCPS will provide outplacement services for those employees who are not solected for

positions in the new central office organization

- . After successfully completing the initial reorganization in FY 2002, DCPS will undortake several additional organization-related activities that are essential to meeting the goals of the Business Plan for Strategic Reform, These Include
- Build the new office of Institutional Advancement
- Build on the performance management system launched in the first year

CENTRAL TRANSFORMATION: TIMING AND PROCESS

CONFIDENTIAL CIRAFT 11-14-01

By November 16

requirements, and performance standards for new organizational/functional structure central office programmatic units to develop position descriptions, qualification With Board approval, complete procurement from the GSA schedule to work with

•November 21 Announce

descriptions, timeline and process for completing transformation Announce organizational structure, contractor role in developing new position

•December 10:

employees to be effective January 11. Announce career placement services to be DCOP, Department of Employment Services and the U.S. Department of Labor available to DCPS employees who face termination - working in conjunction with Abolish all existing central office positions, and issue RIF notices to all central office

December 10 through December 21 New positions/qualifications announced internally and externally

•By January 4

Complete assessment of applicants and make selection decisions

January 11

Terminate employees not selected for new positions, with severance pay it applicable

Drivers, Chauffeurs and Helpers Local Union No. 639

TEAMSTERS 639 CENTER

3100 Ames Place, N.E. • Washington, D.C. 20018

Affiliations: International Brotherhood of Teamsters,

Telephone: (202) 636-8170 FAX: (202) 529-9382 E-Mail: Tlocal639@aol.com



JOHN D. CATLETT

RONALD E. ROSS Vice President

JOHN C. STEGER
Secretary-Treesurer

JAMES F. WOODWARD Recording Secretary

January 18, 2002

SENT VIA FACSIMILE & CERTIFIED MAIL P 482 058 579

Dr. Paul L. Vance Superintendent District of Columbia Schools 825 North Capitol Street, N.E. Washington, D.C. 20003

Re: DCPS "Restructuring"

Dear Dr. Vance:

I have been informed, mainly through rumors, that there is a plan to "reorganize" and Teamster DCPS employees will be required to reapply for their jobs. This is supposedly being done to respond to the newly discovered deficit.

Please be advised that DCPS has a labor agreement with Teamsters Locals 639/730. DCPS must have just cause to terminate an employee. The act of requiring employees to reapply is a termination of employment.

Furthermore, any change in bargaining unit work is a mandatory subject at bargaining. A unilateral change of bargaining unit positions is an unfair labor practice. As you are aware, Teamsters Locals 639/730 are in contract negotiations now and have tentatively agreed on restructuring bargaining unit classifications.

DCPS Teamster workers did not cause any part of the deficit, and I can assure you that Teamsters Locals 639/730 will use all means necessary to oppose any attempt to RIF needed school employees and will not agree that DCPS Teamsters have to reapply to keep working at DCPS.

Dr. Paul L. Vance January 18, 2002 Page Two

To pursue this reorganization plan will be counter productive and take time and energy away from your goal of improving DCPS, a goal that we share.

As I have said many times before, the Teamsters will support every effort to obtain full funding for DCPS. Let us work together toward that goal.

Sincerely,

President

cc: Mr. Archie Smith

Ms. Peggy Cooper Cafritz Ms. Veleter M.B. Mazyck Drivers, Chauffeurs and Helpers Local Union No. 639

TEAMSTERS 639 CENTER

3100 Ames Place, N.E. • Washington, D.C. 20018

Affiliations: International Brotherhood of Teamsters, Teamsters Joint Council No. 55 Telephone: (202) 636-8170 FAX: (202) 529-9382 E-Mail: Tlocal639@gol.com



JOHN D. CATLETT President

RONALD E. ROSS

JOHN C. STEGER Secretary-Treasurer

JAMES F. WOODWARD
Recording Secretary

February 4, 2002

VIA FAX AND CERTIFIED MAIL - 7000 1503 0003 0509 0449

Veleter M.B. Mazyck, Esq. General Counsel DC Public Schools 825 N. Capitol Street, NE – 9th Floor Washington, DC 20002-4232

Dear Ms. Mazyck:

As we have discussed, Local #639 and Local #730 are concerned about the Superintendent's "transformation" plan adopted by the Board of Education on November 16, 2001. I have written to Superintendent Vance but have yet to receive a response.

Please consider this a formal request to negotiate over the planned changes in the definition of the bargaining unit. As you know, an employer violates the CMPA by unilaterally changing the definition of the bargaining unit. The re-titling of bargaining unit positions can occur only by agreement of the parties or by a PERB decision. Assuming, arguendo, that DCPS can lawfully impose the "transformation" unilaterally, the Union seeks to negotiate over its impact on bargaining unit employees. We will propose such topics as the continuation of pay and benefits, assistance in relocating employees to other positions in the District of Columbia government and positions in the private sector and other forms of outplacement counseling.

We hope to begin bargaining shortly after we receive the following documents, which we believe are necessary to properly understand and evaluate the Superintendent's plan:

Veleter M.B. Mazyck, Esquire February 4, 2002 Page 2

- A complete copy of the "transformation" document and all supporting materials that discuss the "transformation" with respect to bargaining unit positions.
- A copy of all requests for proposals (RFP) issued seeking contractors to assist the Board in the reclassification process or to perform other duties in connection with the "transformation."
- A copy of all contracts issued in response to the RFP identified above.
- Copies of all new position descriptions and the position descriptions they replace.
- Copies of all documents used or to be used in determining whether current bargaining unit employees are qualified for appointment to the "new" positions.

Thank you for your prompt attention and immediate response.

Sincerely,

John D. Catlett

President

JDC/vrr

cc: Archie Smith, President, Teamsters Local #730

mazyck3.ltr

CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing Complaint were mailed, first class, postage prepaid, this 6th day of February 2002, to:

Veleter M.B. Mazyck, Esq. District of Columbia Public Schools 825 North Capitol Street, N.E. Washington, DC 20003-4232

Jonathan G. Axelroo